



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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November 13, 2015

Mr. Patrick Austin - #224051  
Wabash Valley Correctional Facility  
6908 South Old U.S. Highway 41  
P.O. Box 500  
Carlisle, Indiana 47838

*Re: Formal Complaint 15-FC-267; Alleged Violation of the Access to Public Records Act by the Clerk of the Elkhart Circuit Court*

Dear Mr. Austin,

This advisory opinion is in response to your formal complaint alleging the Clerk of the Elkhart Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* As of the writing of this complaint, the Clerk has not responded to your complaint, despite an invitation by this Office to do so on October 2, 2015. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 10, 2015.

## BACKGROUND

Your complaint alleges the Clerk of the Elkhart Circuit Court violated the Access to Public Records Act by failing to provide the documents you requested.

On August 29, 2015, you requested to receive a copy of certain records related to an identified cause number. You also included a cover letter outlining the documents you requested and stating you needed the records to appeal your case. On September 8, 2015 an order was issued denying relief because the matter is on appeal and the court does not have jurisdiction to act.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Clerk of the Elkhart Circuit Court is a public agency for the



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purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy the Clerk's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

Without the benefit of a response, I cannot determine whether there was a justification for withholding the documents. A public agency is to cooperate with the Office of the Public Access Counselor in his investigation. See Ind. Code § 5-14-5-5. I will also note requests for records under the APRA are distinct from court trial rules or discovery. Therefore, a court order or subpoena is not necessary for a Clerk or Court to fulfill an APRA request. Regardless of your status as a litigant, the custodian of the records must fulfill or appropriately deny your records request according to the Access to Public Records Act.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Clerk of the Elkhart Circuit Court has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written over a horizontal line.

Luke H. Britt  
Public Access Counselor